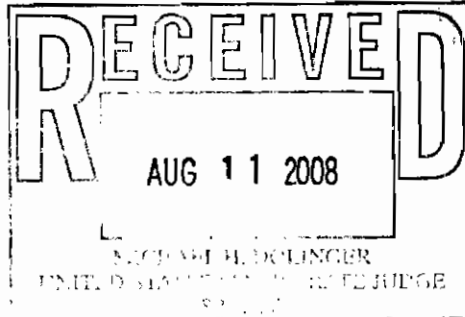


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August 8, 2008

ENDORSED ORDER

Via Facsimile

The Honorable Michael H. Dolinger  
United States Court House  
500 Pearl Street  
New York, New York 10007

Re: Signature Bank v. Ahava Food Corp., et al.  
Case No. 08 Civ. 3893 (NRB) (MHD)

Dear Magistrate Judge Dolinger:

I represent defendants Aaron Banayan, Rueben Beityakov and Ari Katz. I respectfully request a pre-motion conference concerning these individual defendants' motion for a judgment on the pleadings and to dismiss the complaint pursuant to Fed. R. Civ P. 12(c).

As the Court is aware, Rueben Beityakov and Ari Katz are employees of Ahava of California, LLC. The complaint fails to set forth any wrongful action against Signature Bank by either of these individual defendants. Clearly the complaint fails to satisfy Rule 9(b)'s pleading requirements. Plaintiff does not allege that Messrs. Beityakov and Katz are principals of any of the corporate defendants. Messrs. Beityakov and Katz are employees who received paychecks for work performed. There are no other allegations that Messrs. Beityakov and Katz received any of the judgment debtors' assets.

Furthermore, as a matter of law, plaintiff fails to set forth the requisite elements supporting a RICO claim. The Courts in this Circuit dismiss such transparent tactics and are always "on the lookout for the putative RICO case that is really nothing more than an ordinary fraud case clothed in the Emperor's trendy garb." Manhattan Telecommunications Corp. v. Dialamerica Marketing, Inc., 156 F. Supp. 2d 376, 381 (S.D.N.Y. 2001) (quoting Schmidt v. Fleet Bank, 16 F. Supp. 2d 340 (S.D.N.Y. 1998)). At most, plaintiff's allegations claim that the judgment debtors transferred their assets without sufficient consideration to other defendants. There are no valid RICO claims.

*Defendants' request for a stay of depositions is denied. Defendants may serve and file a motion to dismiss, with no need for a pre-motion conference. The filing of such a motion will not occasion a stay of discovery since these defendants would in any event be subject to discovery as non-party witnesses.*


*WJS*  
*8/11/08*

**THE LAW OFFICE OF SETH EISENBERGER**

The Honorable Michael H. Dolinger  
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Plaintiff contends that it is seeking Messrs. Beityakov's and Katz's depositions as "individual defendants." In light of the requested motion and the reasons set forth by the Chapter 11 Debtor Ahava of California LLC's counsel, I respectfully request that the Court stay Messrs. Beityakov's and Katz's depositions. Any discovery in their capacity as Ahava of California LLC employees can be conducted in the Chapter 11 proceeding.

Respectfully submitted,



Seth Eisenberger

cc: Gary F. Eisenberg, Esq. (via email)  
Mara Levin, Esq. (via email)  
Josefina Fernandez McEvoy, Esq. (via email)  
Thomas Hughes, Esq. (via email)